IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 19TH JUNE 2007 / 29TH JYAISHTA 1929

WP(C).No. 34599 of 2005(R)

MC.11/2004 of J.M.F.C.-I, ALUVA
.....

PETITIONER:

MUHAMMED, AGED 45 YEARS,
S/O. ASU, MADATHIPARAMBIL HOUSE,
NEAR PAKISTHAN COLONY, DESHABHIMANI ROAD,
KALOOR, KOCHI.

BY ADV. SRI.ESM.KABEER

RESPONDENT:

SHEELA, D/O. IBRAHIMKUTTY,
MANNAMKUZHI HOUSE, ALUVA DESOM,
ALUVA TALUK, ERNAKULAM.

BY ADV. SRI.C.ANILKUMAR (KALLESSERIL)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.34599/2005 R

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE AGREEMENT ENTERED INTO BETWEEN THE PETITIONER AND THE RESPONDENT'S FATHER DTD. 10/06/2004.**

EXT.P2: **COPY OF THE PETITION O.P.NO.938/2004 FILED BY THE RESPONDENT BEFORE THE FAMILY COURT, ERNAKULAM.**

EXT.P3: **COPY OF THE RECEIPT SHOWING THE PAYMENT OF RS.40,000/- DTD. 15/09/2004.**

EXT.P4: **COPY OF THE RECEIPTS SHOWING THE PAYMENT OF RS.80,000/- DTD. 25/09/2004.**

EXT.P5: **COPY OF THE PETITION FILED BY THE RESPONDENT BEFORE THE J.F.C..M.1, ALUVA (M.C.NO.11/2004).**

EXT.P6: **COPY OF THE DISCHARGE SUMMARY REPORT ISSUED FROM THE LISSIE HOSPITAL.**

/TRUE COPY/

KSS

PIUS C. KURIAKOSE,J.

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W.P.(C) No.34599 of 2005

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Dated: 19th June, 2007

JUDGMENT

Heard Mr.E.S.M.Kabeer, counsel for the petitioner and the learned counsel for the respondent.

2. Having regard to the submissions of Mr.E.S.M.Kabeer, counsel for the petitioner, I am of the view that he has made out a fairly strong case in support of his contention that Ext.P5 is not maintainable. But at the same time I do not want to decide the issue finally in this proceeding. I dispose of the Writ Petition directing the petitioner to file preliminary objections regarding the maintainability of M.C.11 of 2004 producing copies of Exts.P1 and P2 before the learned Magistrate. If the preliminary objections are received by the learned Magistrate within two weeks of receiving copy of the judgment, the learned Magistrate will hear the petitioner and also the respondent and take a decision. Decision shall be taken by the learned Magistrate on the maintainability of Ext.P5 at the earliest and at any rate within one month of receiving preliminary objections. The interim order of stay will continue till such time as the learned Magistrate takes a decision as directed above.

srd **PIUS C.KURIAKOSE, JUDGE**